

No.

CR 06 00748 RMW

HRL

SEALED BY ORDER  
OF THE COURT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA A 11:54

SAN JOSE DIVISION

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

THE UNITED STATES OF AMERICA

vs.

ANDREW THOMAS RUSSO, DENNIS LEBORGNE,  
DAVID JOHN, and JOHN F. TUIE

INDICTMENT

**COUNT ONE:** Title 21, United States Code, Sections 846- Conspiracy to Distribute Controlled Substances.

**COUNT TWO:** Title 18, United States Code, Sections§ 1956(h) - Conspiracy to Launder Money.

**COUNTS THREE THROUGH TEN-:** Title 18, United States Code, Section §1956(a)(1)(4)(i) - Promotional Money Laundering)

*A true bill.*

*J. P. Ruiter*

*Foreperson*

Filed in open court this 15<sup>th</sup> day of November

A.D. 2006

*[Signature]*

UNITED STATES MAGISTRATE JUDGE

DOCUMENT NO	CSA's INITIALS
1	0
DISTRICT COURT CRIMINAL CASE PROCESSING	

Bail. \$ \_\_\_\_\_

NO BAIL ARREST WARRANT AUTHORIZED  
FOR EACH DEFENDANT

1 KEVIN V. RYAN (CASBN 118321)  
2 United States Attorney

FILED

2006 NOV 15 A 11: 54

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

SEAL BY ORDER  
OF THE COURT

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 ANDREW THOMAS RUSSO,  
15 DENNIS LEBORGNE, a/k/a Frenchy,  
16 DAVID JOHN, and  
JOHN F. TUIE,

17 Defendants.

CR

No 06

00748

RMW

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VIOLATIONS: 21 U.S.C. § 846 –  
Conspiracy to Distribute Controlled  
Substances; 18 U.S.C. § 1956(a)(1)(A)(i) –  
Money Laundering; § 1956(h) - Conspiracy  
to Commit Money Laundering; 21 U.S.C. §§  
853(a) – Drug Forfeiture; and 18 U.S.C. §  
982(a)(1) – Money Laundering Forfeiture

SAN JOSE VENUE

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INDICTMENT

The Grand Jury charges:

BACKGROUND

At times relevant to this Indictment:

CONTROLLED SUBSTANCES ACT

1. The United States Drug Enforcement Administration ("DEA") was the agency of  
the United States charged with the responsibility of enforcing the controlled substances laws and  
regulations of the United States.

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U.S. v. RUSSO, et al.  
INDICTMENT

DOCUMENT NO	CSA's INITIALS
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DISTRICT COURT CRIMINAL CASE PROCESSING	

1           2.       DEA was also responsible for, among other things, regulating the pharmaceutical  
2 industry, medical professionals, researchers, manufacturers, and distributors in complying with  
3 the Controlled Substances Act ("CSA"), codified at 21 U.S.C. § 801 et seq. The CSA governed  
4 the manufacture, distribution, and dispensing of controlled substances in the United States.

5           3.       Pharmacies dispensing controlled substances were required to register with the  
6 DEA. A separate registration was required for each principal place of business where controlled  
7 substances were distributed or dispensed. A DEA registered pharmacy could engage in activities  
8 only as authorized by the state where the pharmacy was located.

9           4.       The CSA was the federal law that placed all controlled substances into one of five  
10 categories, or schedules, according to the drug's potential for abuse, physical and psychological  
11 dependence liability, and current accepted medical use. Various prescription drugs were  
12 scheduled substances under the CSA. There were five schedules of controlled substances -  
13 schedules I, II, III, IV, and V. Abuse of Schedule III drugs may lead to moderate or low physical  
14 dependence or high psychological dependence. Abuse of Schedule IV drugs may lead to more  
15 limited physical dependence or psychological dependence relative to the drugs or other  
16 substances in Schedule III.

17           5.       Title 21, Code of Federal Regulations, Section 1306.04(a) provided:

18                   A prescription for a controlled substance to be effective must be  
19                   issued for a legitimate medical purpose by an individual practitioner  
20                   acting in the usual course of his professional practice. The  
21                   responsibility for the proper prescribing and dispensing of controlled  
22                   substances is upon the prescribing practitioner, but a corresponding  
23                   responsibility rests with the pharmacist who fills the prescription. An  
24                   order purporting to be a prescription issued not in the usual course of  
25                   professional treatment or in legitimate and authorized research is not  
26                   a prescription within the meaning and intent of section 309 of the Act  
27                   (21 U.S.C. 829) and the person knowingly filling such a purported  
28                   prescription, as well as the person issuing it, shall be subject to the  
                    penalties provided for violations of the provisions of law relating to  
                    controlled substances.

25           6.       Phentermine, a stimulant, was classified under federal narcotics laws as a  
26 Schedule IV controlled substance.

27           ///

28           ///

1                    STATE LAWS AND MEDICAL ASSOCIATION POSITIONS

2            7.        An example of some state laws that imposed requirements upon doctors and  
3 healthcare professionals to take certain steps before they could prescribe, distribute, or dispense  
4 controlled substances included:

5                                    CALIFORNIA LAW

6 Business and Professions Code

7            Section 4110. (a) No person shall conduct a pharmacy in the State of California unless he  
8 or she has obtained a license from the board. A license shall be required for each  
9 pharmacy owned or operated by a specific person. A separate license shall be required  
10 for each of the premises of any person operating a pharmacy in more than one location.  
11 The license shall be renewed annually. The board may, by regulation, determine the  
12 circumstances under which a license may be transferred.

13            Section 4120. (a) A nonresident pharmacy shall not sell or distribute dangerous drugs or  
14 dangerous devices in this state through any person or media other than a wholesaler who  
15 has obtained a license pursuant to this chapter or through a selling or distribution outlet  
16 that is licensed as a wholesaler pursuant to this chapter without registering as a  
17 nonresident pharmacy.

18            Section 4067. (a) No person or entity shall dispense or furnish, or cause to be dispensed  
19 or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the  
20 Internet for delivery to any person in this state without a prescription issued pursuant to a  
21 good faith prior examination of a human or animal for whom the prescription is meant if  
22 the person or entity either knew or reasonably should have known that the prescription  
23 was not issued pursuant to a good faith prior examination of a human or animal, or if the  
24 person or entity did not act in accordance with Section 1761 of Title 16 of the California  
25 Code of Regulations.

26 Health and Safety Code

27            Section 11153. (a) A prescription for a controlled substance shall only be issued for a  
28 legitimate medical purpose by an individual practitioner acting in the usual course of his  
or her professional practice. The responsibility for the proper prescribing and dispensing  
of controlled substances is upon the prescribing practitioner, but a corresponding  
responsibility rests with the pharmacist who fills the prescription. Except as authorized by  
this division, the following are not legal prescriptions: (1) an order purporting to be a  
prescription which is issued not in the usual course of professional treatment or in  
legitimate and authorized research; or (2) an order for an addict or habitual user of  
controlled substances, which is issued not in the course of professional treatment or as  
part of an authorized narcotic treatment program, for the purpose of providing the user  
with controlled substances, sufficient to keep him or her comfortable by maintaining  
customary use.

29                                    NORTH CAROLINA LAW

30 21 NCAC 46.1801 Right to Refuse a Prescription

31            (b) A pharmacist shall not fill or refill a prescription order if the pharmacist actually  
32 knows or reasonably should know that the order was issued without a physical

1 examination of the patient and in the absence of a prior prescriber-patient relationship,  
2 unless:

- 3 (1) the prescription order was issued for the patient by a psychiatrist;
- 4 (2) the prescription order was issued for the patient after discussion of the patient  
5 status with a treating psychologist, therapist, or physician;
- 6 (3) the prescription order was ordered by a physician for flu vaccinations for  
7 groups of patients or members of the public;
- 8 (4) the prescription order was for prophylactic purposes, such as the ordering of  
9 antibiotics by a pediatrician for members of a child's family when the child has a  
10 positive strep test;
- 11 (5) the prescription order was an emergency order for medication related to  
12 pregnancy prevention; and
- 13 (6) the prescription order was an order for medications to be taken by groups  
14 traveling to foreign countries.

#### 15 21 NCAC 46.1805 Dispensing Drugs without a Prescription

16 The dispensing of or any delivery of a prescription drug, including the surrender of  
17 control or possession in any manner which results in a delivery of a prescription drug,  
18 without a valid prescription order is unlawful. Refilling a prescription for a prescription  
19 drug without authorization is unlawful.

#### 20 21 NCAC 46.1811 Excessive Dispensing of Prescription Drugs

21 Pharmacists shall not dispense and permit holders shall not allow a pharmacist to  
22 dispense prescription drugs at such a rate per hour or per day as to pose a danger to the  
23 public health or safety.

24 8. The American Medical Association ("AMA") was the largest association of  
25 medical doctors in the United States. Its purpose was to advance the interests of physicians, to  
26 promote better public health, to lobby for medical legislation, and to raise money for medical  
27 education. Since at least 1999, the AMA publicly announced its position that a physician who  
28 offers a prescription to a patient solely on the basis of an online questionnaire without ever  
having examined the patient has generally not met the appropriate medical standards of care.

9 9. The Federation of State Medical Boards of the United States, Inc. ("FSMB") was  
10 a national organization comprised of the 70 medical boards of the United States, the District of  
11 Columbia, Puerto Rico, Guam and the U.S. Virgin Islands. On behalf of its membership,  
12 FSMB's mission was to improve the quality, safety, and integrity of health care through the  
13 development and promotion of high standards for physician licensure and practice. Since at least  
14 2000, the FSMB has recognized that Internet web sites permitting customers to obtain  
15 prescription drugs without an adequate evaluation by a physician poses an immediate threat to  
16 public health and safety. As a result, FSMB has publicly announced its position that the

1 prescribing of medications by physicians based solely on an online questionnaire fails to meet an  
2 acceptable standard of care and is outside the bounds of professional conduct.

### 3 INTERNET PHARMACIES

4 10. Individuals that operated web sites to sell pharmaceuticals generally created an  
5 Online Pharmacy Affiliate Program ("OPAP") or joined an existing OPAP to manage their e-  
6 commerce business. OPAPs were simply contractual agreements establishing an e-commerce  
7 business to oversee the acquisition, sale and distribution of pharmaceuticals and other related  
8 products. OPAPs generally consisted of five (5) or fewer interested parties involved in an online  
9 transaction: (1) the customer; (2) an Affiliate site; (3) a Merchant site; (4) a Physician Network  
10 and; (5) a Pharmacy Network. OPAP maintained merchant web sites ("Merchants") to facilitate  
11 the sale of their products. OPAPs established accounting systems to receive and make payments;  
12 opened bank accounts to hold operating capital; recruited affiliate web sites ("Affiliates"),  
13 physicians and pharmacies; contracted for services provided by credit card and overnight  
14 shipping companies; purchased and/or developed and maintained sophisticated software to track  
15 all aspects of their business; and, provided Affiliates, Physician Networks and Pharmacy  
16 Networks with e-business assistance and instruction.

17 11. Affiliate websites were the web sites the customer first saw when attempting to  
18 purchase the OPAP's products. The customers did not purchase the pharmaceuticals from the  
19 Affiliate websites, but were usually electronically re-directed customers to the Merchant site  
20 where the purchase occurred.

21 12. Merchant web sites were the online stores from which customers ultimately  
22 purchased pharmaceuticals. These sites took the customer's order, collected the money via credit  
23 card or other electronic means, directed OPAP physicians to approve drug orders, fulfilled the  
24 orders through a Pharmacy Network and shipped the products to the customer. When a customer  
25 entered a Merchant web site and clicked to purchase an item, the Merchant web site prompted the  
26 customer to provide his/her biographical information, shipping information, payment method and  
27 a medical history in the form of an online questionnaire. The data provided by the customer was  
28

1 stored in a database that was accessible through a web-based interface by OPAP physicians who  
2 viewed and approved, and pharmacies that filled and shipped, pending orders.

3 13. A Physician Network used by the OPAP consisted of one or more doctors who  
4 were recruited and contracted by the OPAP to approve drug orders for customers ordering from  
5 the Merchant site. After the customer submitted a request to purchase pharmaceuticals, the  
6 Merchant site electronically stored the order details until the order was accessed by a network  
7 physician. The physician accessed the Merchant site's "back end" by providing his or her user  
8 identification and password. This "back end" consisted of a database and administrative tools  
9 that were not accessible to the general public. The physician subsequently reviewed the  
10 customer's request, clicked a box to approve the order and then clicked a button to submit the  
11 now approved order to the Pharmacy Network for filling.

12 14. An OPAP used one or more contracted pharmacies of a Pharmacy Network to fill  
13 a customer's drug order. Similar to the network physician, an employee of the network  
14 pharmacy accessed the Merchant "back end" site by providing a user name and password and  
15 then identified the orders that the pharmacy could fill and ship. Through web-based software, the  
16 Merchant site generated a label for the pill bottle containing pertinent information about the  
17 consumer, the pharmaceutical, the approving physician and the participating pharmacy. The  
18 software also generated the appropriate pharmaceutical advisory/contraindication sheet and a  
19 shipping label bearing the consumer's name and address. Once the participating pharmacy filled  
20 the prescription, they packaged it, attached the preprinted label and shipped it to the customer via  
21 a commercial courier service, most frequently Federal Express or United Parcel Service.

#### 22 DEFENDANTS AND RELATED ENTITIES

23 15. UNITED CARE PHARMACY obtained a DEA retail pharmacy registration on  
24 June 6, 2005 for 2420 S. 17th Street, Unit C, Wilmington, North Carolina. UNITED CARE  
25 PHARMACY's DEA registration was surrendered on March 8, 2006 after the North Carolina  
26 Board of Pharmacy executed a Summary Suspension Order.

27 16. ANDREW RUSSO was the president and sole director of UNITED CARE  
28 PHARMACIES, INC. and was the organizer of UNITED CARE PHARMACY, LLC. UNITED

1 CARE PHARMACIES, INC., was a Nevada corporation incorporated on or about May 26, 2005.  
2 UNITED CARE PHARMACY, LLC was a North Carolina Limited Liability Company organized  
3 on or about May 23, 2005. ANDREW RUSSO was the Chief Operating Officer ("C.O.O.") of  
4 UNITED CARE PHARMACY. UNITED CARE PHARMACY distributed and dispensed  
5 controlled substances and other prescription drugs for OPAP/OPANs operated by other  
6 individuals and also distributed and dispensed controlled substances for an OPAP/OPAN  
7 controlled by the same individuals that operated UNITED CARE PHARMACY.

8 17. DENIS LEBORGNE was ANDREW RUSSO's partner and the Chief Technology  
9 Officer ("C.T.O.") in the operations of UNITED CARE PHARMACY and the associated web  
10 sites. From in or about March 2005 through at least January 2006, DENIS LEBORGNE was the  
11 C.T.O. for UNITED CARE PHARMACY. DENIS LEBORGNE's responsibilities included the  
12 recruitment of affiliates, securing online payment processing, establishing merchant accounts,  
13 and software integration.

14 18. Defendant DAVID JOHN was the Chief Financial Officer ("C.F.O.") for  
15 UNITED CARE PHARMACY. From in or about March 2005 through in or about November  
16 2005, DAVID JOHN's responsibilities as C.F.O. included the ordering of pharmaceuticals,  
17 record-keeping, and collecting payments from the web site owners.

18 19. Defendant JOHN F. TUIITE, Registered Pharmacist, was a pharmacist licensed in  
19 the State of North Carolina. Defendant TUIITE authorized fraudulent prescriptions to be filled by  
20 UNITED CARE PHARMACY between in or about September 2005 and March 2006.

#### 21 OTHER ENTITIES

22 20. MSN Hotmail ("Hotmail") was an Internet Service Provider ("ISP") with  
23 computer servers located in the Northern District of California.

24 21. Yahoo! was an ISP with computer servers located in the Northern District of  
25 California.

26 22. Federal Express ("Fed Ex") was a commercial shipping company that provided  
27 express, ground, freight, and expedited shipping services to its customers across the United  
28 States.



1           23.     United Parcel Service ("UPS") was a commercial shipping company that provided  
2 express, ground, freight, and expedited shipping services to its customers across the United  
3 States.

4           24.     AmerisourceBergen was a pharmaceutical wholesaler located in Valley Forge,  
5 Pennsylvania. Payments to Amerisource or Bergen Brunswig after August 2001 went to  
6 AmerisourceBergen.

7           25.     Stat Pharmaceuticals was a pharmaceutical wholesaler located in Santee,  
8 California.

9           26.     Heartland Payment Systems ("Heartland") was a credit and debit card, payroll  
10 and related processing services company that provided servcies to retail merchants throughout  
11 the United States.

12 COUNT ONE:       (21 U.S.C. § 846 – Conspiracy to Distribute Controlled Substances)

13           27.     The factual allegations of paragraphs 1 through 26 above are realleged and  
14 incorporated herein by reference.

15           28.     Beginning no later than in or about March 2005, and continuing until on or about  
16 March 8, 2006, in the Northern District of California and elsewhere, defendants,

17                               ANDREW THOMAS RUSSO,  
18                               DENIS LEBORGNE,  
19                               DAVID JOHN, and  
                                  JOHN F. TUIITE,

20 did knowingly conspire and agree with others known and unknown to the Grand Jury, to:

- 21           (a)     distribute and dispense various Schedule IV controlled substances, including but  
22                   not limited to, quantities of Phentermine, a Schedule IV controlled substance,  
23                   other than for a legitimate medical purpose, and not in the course of professional  
24                   practice, in violation of Title 21, United States Code, Sections 841(a)(1),  
25                   841(b)(2), and Title 21, Code of Federal Regulations, Section 1306.04; and  
26           (b)     use a communication facility in committing and in causing and facilitating the  
27                   distribution and dispensing of Schedule IV controlled substances, including but  
28                   not limited to, Phentermine, a Schedule IV controlled substance, other than for a

1 legitimate medical purpose and not in the usual course of professional practice, in  
2 violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(2), and  
3 843(b), and Title 21, Code of Federal Regulations, Section 1306.04.

4 OBJECT OF THE CONSPIRACY

5 29. It was the object of the conspiracy to sell, via the Internet, controlled substances to  
6 consumers in the United States and to distribute and dispense those controlled substances from  
7 UNITED CARE PHARMACY. Defendants' process for selling controlled substances violated  
8 the federal requirements under the CSA, regulations set forth in the Code of Federal Regulations,  
9 and various state laws requiring that controlled substances be dispensed only for a legitimate  
10 medical purpose and in the usual course of professional medical practice.

11 MANNER AND MEANS OF THE CONSPIRACY

12 30. It was a part of the conspiracy that the defendants established a pharmacy and  
13 associated the pharmacy with an OPAP operated by other individuals to distribute  
14 pharmaceuticals as well as distributing pharmaceuticals for an OPAP operated by several  
15 members of the conspiracy to citizens of the United States, without requiring a face-to-face  
16 meeting or any consultation with a physician. The defendants obtained money from OPAP  
17 owners for distributing and dispensing drug orders obtained via the Internet. In addition, the  
18 defendants obtained money from customers through web sites that represented that a physician  
19 would review an online health questionnaire completed by the customer and issue a valid and  
20 lawful prescription that would be filled by a licensed pharmacy, when in truth and in fact, there  
21 was no meaningful physician review prior to approval, and no valid and lawful prescription was  
22 issued.

23 31. It was further part of the conspiracy that the defendants caused the controlled  
24 substances to be distributed and dispensed to customers without: an adequate patient history;  
25 performing a mental or physical exam; using appropriate diagnostic or laboratory testing; or  
26 providing a means to monitor medication response. Generally, the order form was the only  
27 contact with the customer.

28 32. It was further part of the conspiracy that defendants ANDREW THOMAS

1 RUSSO, DENIS LEBORGNE, DAVID JOHN, and JOHN F. TUIITE were owners, operators,  
2 corporate officers, directors, and/or managers of the pharmacy and company that operated certain  
3 of the web sites through which defendants sold and distributed controlled substances.

4 33. It was further part of the conspiracy that defendant JOHN F. TUIITE was a  
5 pharmacist who authorized the distribution and dispensing of controlled substances, including  
6 Phentermine, after failing to confirm that there was a legitimate physician/patient relationship  
7 established prior to distributing the controlled substances and did so for other than a legitimate  
8 medical purpose and not in the usual course of professional practice.

9 OVERT ACTS

10 34. In furtherance of the conspiracy and to achieve its objects, the following overt  
11 acts, among others were committed in the Northern District of California and elsewhere:

- 12 a. On March 22, 2005, ANDREW THOMAS RUSSO contacted Healthcare  
13 Consultants via his e-mail account, tomrusso58@hotmail.com, to obtain  
14 information to set up UNITED CARE PHARMACY.
- 15 b. In or about April 2005, DENIS LEBORGNE sent an e-mail to  
16 tomrusso58@hotmail.com and davidjohncpa@yahoo.com setting out the business  
17 plan for UNITED CARE PHARMACY.
- 18 c. In or about April 2005, DAVID JOHN sent an e-mail to  
19 tomrusso58@hotmail.com setting out a business plan for UNITED CARE  
20 PHARMACY.
- 21 d. On or about April 19, 2005, ANDREW THOMAS RUSSO submitted an  
22 electronic application to the DEA to obtain a DEA number allowing UNITED  
23 CARE PHARMACY to dispense controlled substances.
- 24 e. On or about May 5, 2005, ANDREW THOMAS RUSSO submitted an application  
25 to set up an account with Heartland to process credit card payments for UNITED  
26 CARE PHARMACY.
- 27 f. On May 10, 2005, DENIS LEBORGNE sent an e-mail to, among others,  
28 ANDREW THOMAS RUSSO at tomrusso58@hotmail.com describing how the

1 organization planned to operate UNITED CARE PHARMACIES, the mail and  
2 call center affiliates, physicians network and the existing online pharmacies. In  
3 addition, the e-mail described three (3) phases as follows: (1.) Mail/call center  
4 affiliates, (2.) doctor affiliates and (3.) existing online pharmacies.

- 5 g. On or about May 23, 2005, ANDREW THOMAS RUSSO filed articles of  
6 incorporation with the state of North Carolina to establish UNITED CARE  
7 PHARMACY, LLC.
- 8 h. On or about August 1, 2005, DENIS LEBORGNE sent an e-mail to "Martin"  
9 inquiring as to the requirements to use "Martin's" computer back end services as  
10 part of UNITED CARE PHARMACY's OPAP.
- 11 i. On or about August 22, 2005, DENIS LEBORGNE sent an e-mail to  
12 info@treppides.com and carbon copied ANDREW THOMAS RUSSO's e-mail  
13 account, tomrusso58@hotmail.com, stating that DENIS LEBORGNE needed to  
14 establish a European Union ("EU") "shelf company" and that DENIS  
15 LEBORGNE would wire the money from a merchant account to pay for the  
16 associated fees.
- 17 j. On or about August 25, 2005, ANDREW THOMAS RUSSO wired \$3,500 to a  
18 bank in Cyprus to pay the fees for the EU "shelf company."
- 19 k. On or about September 27, 2005, ANDREW THOMAS RUSSO submitted a new  
20 account form to Stat Pharmaceuticals.
- 21 l. On or about September 23, 2005, DENIS LEBORGNE sent an e-mail with a  
22 subject of "3 personal accounts needed" to info@treppides.com and carbon copied  
23 tomrusso58@hotmail.com and Salvator Lamorte, a/k/a Sal Lamorte at  
24 slamorte@hushmail.com, advising "Andreas" that DENIS LEBORGNE wanted to  
25 open bank accounts in Cyprus for ANDREW THOMAS RUSSO, DENIS  
26 LEBORGNE and Sal Lamorte and asked "Andreas" to forward the necessary  
27 information on how to transfer funds in and out of those accounts.
- 28

- 1 m. On or about the dates set forth in the table below, UNITED CARE PHARMACY  
2 caused to be delivered the following quantities of Phentermine to the Northern  
3 District of California:

4

Date	Quantity of Phentermine
October 4, 2005	30 tablets
November 18, 2005	90 tablets
December 7, 2005	90 tablets
December 7, 2005	90 tablets
January 31, 2006	90 tablets
March 2, 2006	30 tablets
March 2, 2006	90 tablets

10

- 11 n. On or about the dates set forth in the table below, ANDREW THOMAS RUSSO  
12 wired the amounts in the following table to Wells Fargo in the Northern District  
13 of California and into an account belonging to an Affiliate of the OPAP operated  
14 by ANDREW THOMAS RUSSO, DENIS LEBORGNE, and DAVID JOHN:  
15

16

Date	Amount of wire
October 18, 2005	\$3,349.10
November 7, 2005	\$864.00
November 15, 2005	\$1,758.10
November 22, 2005	\$2,735.00
December 2, 2005	\$13,818.50
December 9, 2005	\$7,935.70
December 13, 2005	\$3,247.80
December 29, 2005	\$6,656.21

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27 ///

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1 COUNT TWO: (18 U.S.C. § 1956(h) - Conspiracy to Launder Money)

2 35. The factual allegations of paragraphs 1 through 34 above are realleged and  
3 incorporated herein by reference.

4 36. Beginning in or about March 2005, the exact date being unknown, and continuing  
5 until in or about January 2006, in the Northern District of California and elsewhere, defendants

6 ANDREW THOMAS RUSSO,  
7 DENIS LEBORGNE, and  
8 DAVID JOHN,

9 did knowingly conspire and agree with others known and unknown to the Grand Jury, to launder  
10 money in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

11 OBJECT OF THE CONSPIRACY

12 37. The object of the conspiracy was for the conspirators to obtain large quantities of  
13 funds, thereby enriching themselves, in exchange for distributing and dispensing controlled  
14 substances for other than a legitimate medical purpose and not in the usual course of professional  
15 practice.

16 MANNER AND MEANS

17 38. It was part of the money laundering conspiracy that:

- 18 a. defendants shipped customers controlled substances as previously described in  
19 paragraphs 1 through 34 above;
- 20 b. defendants obtained customers' fees for the distribution of controlled substances,  
21 knowing that the payment of those fees constituted the proceeds of unlawful  
22 activity;
- 23 c. after receiving funds in payment of the fees charged to the customers, defendants  
24 caused the funds to be deposited into bank accounts of the various entities and  
25 individuals involved in the conspiracy; and
- 26 d. defendants then caused transfers of money from those bank accounts for the  
27 purpose of paying the expenses incurred to conduct the unlawful drug sales, such  
28 as shipping bills, wholesale prescription drug bills, pharmacy dispensing bills,

1 rent, and employee salaries, with the intent to further promote the ongoing  
2 unlawful drug sales.

3 OVERT ACTS

4 39. In furtherance of the conspiracy and to achieve its objects, the following overt  
5 acts, among others were committed in the Northern District of California and elsewhere:

- 6 a. On or about August 22, 2005, DENIS LEBORGNE sent an e-mail to  
7 info@treppides.com and carbon copied ANDREW THOMAS RUSSO's e-mail  
8 account, tomrusso58@hotmail.com, stating that DENIS LEBORGNE needed to  
9 establish a European Union ("EU") "shelf company" and that DENIS  
10 LEBORGNE would wire the money from a merchant account to pay for the  
11 associated fees.
- 12 b. On or about August 25, 2005, ANDREW THOMAS RUSSO wired \$3,500 to a  
13 bank account in Cyprus to pay the fees for the EU "shelf company."
- 14 c. On or about September 23, 2005, DENIS LEBORGNE sent an e-mail with a  
15 subject of "3 personal accounts needed" to info@treppides.com and carbon copied  
16 tomrusso58@hotmail.com and Salvator Lamorte, a/k/a Sal Lamorte at  
17 slamorte@hushmail.com, advising "Andreas" that DENIS LEBORGNE wanted to  
18 open Cypriot accounts for ANDREW THOMAS RUSSO, DENIS LEBORGNE  
19 and Sal Lamorte and asked "Andreas" to forward the necessary information on  
20 how to transfer funds in and out of those accounts.
- 21 d. On or about the dates set forth in the table below, ANDREW THOMAS RUSSO  
22 wired the amounts in the following table to Wells Fargo in the Northern District  
23 of California and into an account belonging to an Affiliate of the OPAP operated  
24 by ANDREW THOMAS RUSSO, DENIS LEBORGNE, and DAVID JOHN:

25

Date	Amount of wire
October 18, 2005	\$3,349.10
November 7, 2005	\$864.00
November 15, 2005	\$1,758.10

26  
27  
28

Date	Amount of wire
November 22, 2005	\$2,735.00
December 2, 2005	\$13,818.50
December 9, 2005	\$7,935.70
December 13, 200	\$3,247.80
December 29, 2005	\$6,656.21

- e. On or about the dates set forth in the table below, ANDREW THOMAS RUSSO wired the following amounts to companies from which UNITED CARE PHARMACY obtained pharmaceuticals and services to operate UNITED CARE PHARMACY:

Date	Amount	Recipient
October 6, 2005	\$154,073.53	Bergen Brunswick
October 14, 2005	\$276,217.86	Bergen Brunswick
October 27, 2005	\$250,000.00	Amerisource
November 3, 2005	\$250,000.00	Bergen Brunswick
November 21, 2005	\$400,000.00	Amerisource
November 22, 2005	\$139,476.23	Fed Ex
November 29, 2005	\$152,174.60	UPS
November 29, 2005	\$141,365.31	Fed Ex
January 9, 2006	\$200,000.00	Amerisource

COUNTS THREE through TEN: (18 U.S.C. § 1956(a)(1)(A)(i) - Promotional Money Laundering)

40. The factual allegations of paragraphs 1 through 39 above are realleged and incorporated herein by reference.

41. From in or about March 2005 through at least March 2006, defendants maintained bank accounts in the names and with the account numbers as charged in the chart below, which were used to receive funds from illegally distributed controlled substances.



42. From on or about March 2005 through at least March 2006, funds from these bank accounts were used to pay expenses of the illegal drug scheme.

43. On or about the dates enumerated as to each count, in the Northern District of California, and elsewhere, defendant,

ANDREW THOMAS RUSSO and  
DENIS LEBORGNE,

knowingly conducted financial transactions affecting interstate commerce, in the approximate amounts set forth below, which involved the proceeds of specified unlawful activity, that is the illegal distributing of controlled substances in violation of Title 21, United States Code, Sections 841(a), 843(b) and 846, with the intent to promote the carrying on of the specified unlawful activity, and while conducting such financial transactions knew the property involved in the financial transactions represented the proceeds of some form of unlawful activity; that is, the defendant caused monies that had been paid to the defendants for controlled substances defendants had illegally distributed through web sites controlled by the defendants to be transferred to the payees set forth below, to promote the unlawful activity in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 2:

Count	Date	Amount of wire	Sending Account	Recipient Account
3	10/18/2005	\$3,349.10	SunTrust Acct. 1000034925817	Wells Fargo Acct. 3117676910
4	11/7/2005	\$864.00	SunTrust Acct. 1000034925817	Wells Fargo Acct. 3117676910
5	11/15/2005	\$1,758.10	SunTrust Acct. 1000034925817	Wells Fargo Acct. 3117676910
6	11/22/2005	\$2,735.00	SunTrust Acct. 1000034925817	Wells Fargo Acct. 3117676910
7	12/2/2005	\$13,818.50	SunTrust Acct. 1000034925817	Wells Fargo Acct. 3117676910
8	12/9/2005	\$7,935.70	SunTrust Acct. 1000034925817	Wells Fargo Acct. 3117676910
9	12/13/2005	\$3,247.80	SunTrust Acct. 1000034925817	Wells Fargo Acct. 3117676910

Count	Date	Amount of wire	Sending Account	Recipient Account
10	12/29/2005	\$6,656.21	SunTrust Acct. 1000034925817	Wells Fargo Acct. 3117676910

FIRST FORFEITURE ALLEGATION: (21 U.S.C. §§ 853(a) – Drug Forfeiture)

44. The factual allegations contained in paragraphs 1 through 34 and Count One of this Indictment are hereby realleged and by this reference fully incorporated herein for the purpose of alleging forfeiture pursuant to Title 21, United States Code, Section 853(a)(1) and (a)(2).

45. Upon a conviction of any of the offenses alleged in Counts One through Eight, defendants,

ANDREW THOMAS RUSSO,  
DENIS LEBORGNE,  
DAVID JOHN, and  
JOHN F. TUIE,

shall forfeit to the United States all right, title and interest in property constituting and derived from any proceeds, defendants obtained, directly or indirectly, as a result of said violations, and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of the said violations, including but not limited to a sum of money equal to the total amount of proceeds defendants derived from the commission of said offenses.

46. If, as a result of any act or omission of the defendants, any of said property
- a. cannot be located upon the exercise of due diligence;
  - b. has been transferred or sold to or deposited with, a third person;
  - c. has been placed beyond the jurisdiction of the Court;
  - d. has been substantially diminished in value; or
  - e. has been commingled with other property which cannot be divided without difficulty;

1 any and all interest defendants have in any other property up, to value of the property described  
2 in paragraph 45 above, shall be forfeited to the United States pursuant to Title 21, United States  
3 Code, Section 853(p).

4 All in violation of Title 21, United States Code, Sections 853(a)(1),(a)(2), (p) and Rule  
5 32.2 of the Federal Rules of Criminal Procedure.

6 SECOND FORFEITURE ALLEGATION : (18 U.S.C. § 982(a)(1) – Money Laundering  
7 Forfeiture)

8 47. The factual allegations contained in paragraphs 1 through 45 and Counts Nine  
9 through Seventeen of this Indictment are hereby realleged and by this reference fully  
10 incorporated herein for the purpose of alleging forfeiture pursuant to Title 18, United States  
11 Code, Section 982(a)(1).

12 48. Upon a conviction of any of the offenses alleged in Counts Two through Ten,  
13 defendants,

14 ANDREW THOMAS RUSSO,  
15 DENIS LEBORGNE, and  
16 DAVID JOHN,

17 shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), all  
18 right, title and interest in property, real and personal, involved in said violation, or any property  
19 traceable to such property, including but not limited to the following:

- 20 a. all commission, fees and other property constituting proceeds of said  
21 offense;  
22 b. all property used in any manner to commit or facilitate the commission of  
23 said offense;  
24 c. a sum of money equal to the total amount of money involved in the  
25 commission of said offense.

26 49. If, as a result of any act or omission of the defendants, any of said property

- 27 a. cannot be located upon the exercise of due diligence;  
28 b. has been transferred or sold to or deposited with, a third person;  
c. has been placed beyond the jurisdiction of the Court;  
d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty;

any and all interest defendants have in any other property, up to value of the property described in paragraph 48 above, shall be forfeited to the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).


All in violation of Title 18, United States Code, Sections 982, 1956, and Rule 32.2 of the Federal Rules of Criminal Procedure.

DATED: 15 NOV 06

A TRUE BILL.

  
FOREPERSON

KEVIN V. RYAN  
United States Attorney

  
W. DOUGLAS SPRAGUE  
Acting Chief, Criminal Division

(Approved as to form:

  
AUSA KEWALRAMANI

# DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT  
☐ SUPERSEDING

## OFFENSE CHARGED

Count One: Title 21 § 846 - Conspiracy to distribute controlled substances  
 Count Two: Title 18 § 1956(h) - Conspiracy to launder funds  
 Counts Three-Ten - Title 18 § 1956(a)(1)(A)(i) - Money Laundering

☐ Petty  
☐ Minor  
☐ Misdemeanor  
☒ Felony

## PENALTY:

Count 1 - 3 years imprisonment, \$250,000 fine, 1 year supervised release, \$100 special assessment  
 Counts 2-10 - 20 years imprisonment, \$500,000 or twice the value of property involved, 3 years supervised release

## PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

S/A Brandon Bridgers - DEA

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

SHOW  
DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

MAGISTRATE  
CASE NO.

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person  
Furnishing Information on  
THIS FORM

KEVIN V. RYAN

☒ U.S. Att'y ☐ Other U.S. Agency

Name of Asst. U.S. Att'y  
(if assigned)

H. H. (SHASHI) KEWALRAMANI

Name of District Court, and/or Judge/Magistrate Location  
NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT - U.S.

ANDREW THOMAS RUSSO

DISTRICT COURT NUMBER

2006 NOV 15 A 11:52  
 RICHARD W. WIEKING  
 CLERK  
 U.S. DISTRICT COURT  
 NO. DIST. OF CA. S.J.

CR 06 00748 RMW

## DEFENDANT

### IS NOT IN CUSTODY

- 1) ☒ Has not been arrested, pending outcome this proceeding.  
 If not detained give date any prior summons was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

### IS IN CUSTODY

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges
- If answer to (6) is "Yes", show name of institution

Has detainer  
been filed?

☐ Yes  
☐ No

If "Yes"  
give date  
filed

DATE OF  
ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED  
TO U.S. CUSTODY

☐ This report amends AO 257 previously submitted

## ADDITIONAL INFORMATION OR COMMENTS

### PROCESS:

☐ SUMMONS ☐ NO PROCESS\*

☒ WARRANT Bail Amount: \_\_\_\_\_

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address: \_\_\_\_\_

\*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: \_\_\_\_\_

Before Judge: \_\_\_\_\_

Comments: \_\_\_\_\_

**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT  
☐ SUPERSEEDING
**OFFENSE CHARGED**
 Count One: Title 21 § 846 - Conspiracy to distribute controlled substances  
 Count Two: Title 18 § 1956(h) - Conspiracy to launder funds  
 Counts Three-Ten - Title 18 § 1956(a)(1)(A)(i) - Money Laundering

☐ Petty  
☐ Minor  
☐ Misdemeanor  
☒ Felony
**PENALTY:**
 Count 1 - 3 years imprisonment, \$250,000 fine, 1 year supervised release, \$100 special assessment  
 Counts 2-10 - 20 years imprisonment, \$500,000 or twice the value of property involved, 3 years supervised release
**PROCEEDING**

Name of Complainant Agency, or Person (&amp; Title, if any)

S/A Brandon Bridgers - DEA

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW DOCKET NO.

MAGISTRATE CASE NO.

 Name and Office of Person  
 Furnishing Information on  
 THIS FORM

KEVIN V. RYAN

☒ U.S. Att'y ☐ Other U.S. Agency

 Name of Asst. U.S. Att'y  
 (if assigned)

H. H. (SHASHI) KEWALRAMANI

 Name of District Court, and/or Judge/Magistrate Location  
 NORTHERN DISTRICT OF CALIFORNIA
**FILED**

DEFENDANT - U.S.

2006 NOV 15 A 11:52

DENIS LEBORGNE

 RICHARD W. WIEKING  
 CLERK  
 U.S. DISTRICT COURT  
 NO. DIST. OF CA. S. J.

DISTRICT COURT NUMBER

06 00748 RMW

DEFENDANT

HRL

**IS NOT IN CUSTODY**

- 1)
- ☒
- Has not been arrested, pending outcome this proceeding.
- 
- If not detained give date any prior summons was served on above charges
- 
- 2)
- ☐
- Is a Fugitive
- 
- 3)
- ☐
- Is on Bail or Release from (show District)

**IS IN CUSTODY**

- 4)
- ☐
- On this charge
- 
- 5)
- ☐
- On another conviction
- 
- 6)
- ☐
- Awaiting trial on other charges
- 
- If answer to (6) is "Yes", show name of institution

 Has detainer  
 been filed? ☐ Yes ☐ No

 If "Yes"  
 give date  
 filed

 DATE OF  
 ARREST

Month/Day/Year

Or... if Arresting Agency &amp; Warrant were not

Month/Day/Year

 DATE TRANSFERRED  
 TO U.S. CUSTODY

☐ This report amends AO 257 previously submitted
**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**
☐ SUMMONS ☐ NO PROCESS\* ☒ WARRANT Bail Amount:

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

\*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

# DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT  
☐ SUPERSEDING

## OFFENSE CHARGED

Count One: Title 21 § 846 - Conspiracy to distribute controlled substances  
 Count Two: Title 18 § 1956(h) - Conspiracy to launder funds

☐ Petty  
☐ Minor  
☐ Misdemeanor  
☒ Felony

## PENALTY:

Count 1 - 3 years imprisonment, \$250,000 fine, 1 year supervised release, \$100 special assessment  
 Count 2 - 20 years imprisonment, \$500,000 or twice the value of property involved, 3 years supervised release

## PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

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☐ person is awaiting trial in another Federal or State Court, give name of court

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☐ this prosecution relates to a pending case involving this same defendant

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SHOW  
DOCKET NO.

MAGISTRATE  
CASE NO.

Name and Office of Person  
Furnishing Information on  
THIS FORM

KEVIN V. RYAN

☒ U.S. Att'y ☐ Other U.S. Agency

Name of Asst. U.S. Att'y  
(if assigned)

H. H. (SHASHI) KEWALRAMANI

Name of District Court, and/or Judge/Magistrate Location  
NORTHERN DISTRICT OF CALIFORNIA

FILED

DEFENDANT - U.S.

2006 NOV 15 A 11: 53

DAVID JOHN

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

DISTRICT COURT NUMBER

CR 06 00748 RMW

DEFENDANT

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 If not detained give date any prior summons was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

## IS IN CUSTODY

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges
- If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF  
ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED  
TO U.S. CUSTODY

☐ This report amends AO 257 previously submitted

## ADDITIONAL INFORMATION OR COMMENTS

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Date/Time: \_\_\_\_\_

Before Judge: \_\_\_\_\_

Comments: \_\_\_\_\_

# DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT  
☐ SUPERSEDING

Name of District Court, and/or Judge/Magistrate Location  
 NORTHERN DISTRICT OF CALIFORNIA

## OFFENSE CHARGED

Count One: Title 21 § 846 - Conspiracy to distribute controlled substances

☐ Petty  
☐ Minor  
☐ Misdemeanor  
☒ Felony

## PENALTY:

Count 1 - 3 years imprisonment, \$250,000 fine, 1 year supervised release, \$100 special assessment

DEFENDANT - U.S. 2006 NOV 15 A 11:53

JOHN TUIE

RICHARD W. WIEKING  
 CLERK

DISTRICT COURT NUMBERS U.S. DISTRICT COURT  
 NO. DIST. OF CA. S.J.

CR

06

00748

RMW

## DEFENDANT

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- 1) ☒ Has not been arrested, pending outcome this proceeding.  
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DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED TO U.S. CUSTODY

☐ This report amends AO 257 previously submitted

## PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

S/A Brandon Bridgers - DEA

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

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Name and Office of Person  
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☒ U.S. Att'y ☐ Other U.S. Agency

Name of Asst. U.S. Att'y  
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H. H. (SHASHI) KEWALRAMANI

## ADDITIONAL INFORMATION OR COMMENTS

### PROCESS:

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☒ WARRANT Bail Amount: \_\_\_\_\_

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